

SoloSez Popular Threads, September 2012

Hiring on a Contract Basis

Listmates,

Anyway, this is the first time I'm hiring someone and I want to make sure I'm following the law. Any resources out there that you can point me to so I know I'm doing it right? I know I'll need to have him sign a W-2, which I will then give to my accountant, but beyond that I have no clue.

Thanks for any input,

If you are hiring the law clerk as an independent contractor, he would need to fill out a W-9, and if you pay him more than the threshold amount this year (I think it's \$500?), then you also need to fill out a 1099 and give it to him in Jan. 2013 for him to use in filing his taxes.

Also, if he's an independent contractor, it's not really your responsibility to tell him this, but he may not know: he needs to pay self-employment taxes quarterly. As a self-employed individual, he has his own tax responsibilities.

Tracia Y. Lee, Texas

Actually, the federal tax form the student should fill out is a W-9. See <http://tinyurl.com/bmdg45z>

I'm a freelance attorney. I've put together a guide called Download the free guide, *Associates? I Don't Need No Stinkin Associates! Why Solos and Small Law Firms Should Work with Contract Lawyers and How to Do It. *Although it's geared towards working with freelance attorneys (as opposed to law students, who naturally require much more supervision), I think you'll find it helpful. You can download it from my website* *at **Error! Hyperlink reference not valid.**

Lisa Solomon, New York

Is it really possible to hire a law student as a law clerk and treat them as an independent contractor? I would think the level of guidance and supervision necessary would probably preclude independent contractor status.

Kevin W. Grierson, Virginia

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I once hired a co-op student and someone had to point out to me that I was required to pay minimum wage. For some reason, it hadn't occurred to me.

You will also need to have the prospective employee fill out the form that shows he or she is entitled to work in the United States. The form requires one form of ID for a citizen (passport will do) and two forms for a non-citizen (Green Card plus...)

For a while we handled our payroll in house. It was a pain in the neck, but because - at that time - I had only four employees, I didn't think a payroll company would take the account.

I was wrong. I bless the day I transferred my payroll to a company (at the present time, PayChex). It's a Godsend. Otherwise, you will be fussing about all of the withholding rules - social security, Medicare, income tax, etc. etc. I found it to be a pain in the neck. I established a separate payroll account. I put the money in the account; PayChex takes it out, plus an amount for their fee, which I deem reasonable.

I assume you are hiring a lawyer. I once hired a part time lawyer. IT DID NOT WORK. When one hires someone part time, let us say, 20 hours a week. That person will work a maximum of 20 hours. When one hires a professional full time, let us say 40 hours a week, that person will work a MINIMUM of 40 hours.

Given the demands of the practice of law, having someone who walks out the door at a specific time is not practical. You need a professional who stays until the job is done.

If, however, you are hiring an administrative assistant, secretary, etc. then you need to abide by the laws governing labor in your state - e.g. overtime pay, lunch break, etc. In Massachusetts, I would check with the Secretary of State's office to see if there are publications that would help.

That's what comes to mind off the top of my head. Good luck!

Jo Fray, Massachusetts

Yikes! Thanks for the feedback, everyone. I looked into it, and although I think I have a strong argument that the student would qualify as an independent contractor, it's not worth the risk. So I'm getting workers comp insurance effective tomorrow. Beyond that, I'm contacting my CPA to make sure a W-9 will handle any and all tax concerns.

If the intent of the parties is to establish an independent contractor relationship, and if the other IC factors point that way, you should have a written agreement to that fact. I have one, if you need it.

William B. Richards

If you are going to hire the law clerk as an employee, then he would need to fill out different paperwork (not a W-9), and you would have to give him a W-2 in Jan./Feb. 2013. If he is going to work more than 40 hours/week, make sure you pay him overtime b/c I don't think he would be an exempt employee. You will also be responsible for paying his employment taxes. Your CPA should be able to help with that.

Worker's comp will be relatively inexpensive, since the law clerk is only an office worker, unless you plan to send him out in the field (to conduct investigations, interview, etc.), which may increase the cost of your premium. Also if he is going to use his car or a company car, you might want to look into a business auto policy to cover him.

Tracia Y. Lee

Depending on how many employees you have, you may not even need workers' comp (some states exempt companies with 3 or fewer employees). Keep in mind, however, that if you opt out of worker's comp insurance you can be liable to your employees in tort for any workplace injuries.

As for the overtime, I agree with Tracia you probably need to pay overtime wages for work past 40 hours/week. It's been the DOL's position for a while that paralegals are not eligible for salaried status, and a law student who doesn't yet have a degree would probably be treated like a paralegal.

kwg

Kevin W. Grierson

If he works at your office, under your direction and control, and you control the output and his hours, he's an employee, no matter what arguments you may think you have to the contrary.

GAZ
Greg Zbylut, California
